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COMBATING WITCHCRAFT IN THE STATE COURTS OF ANGLOPHONE CAMEROON: THE INSUFFICIENCY OF CRIMINAL LAW

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ABSTRACT Belief in witchcraft is ingrained in Cameroonian society and has met with a variety of responses from traditional courts and state courts in the common law jurisdiction of Anglophone Cameroon. The outcome of witchcraft trials in Anglophone Cameroon is primarily influenced by the applicable laws in force. This article unravels contradictory developments in the fight against witchcraft in the state courts of Anglophone Cameroon. It argues that, while criminal law recognises the existence of witchcraft in the popular belief system and punishes its practice, the application of this law highlights contradictions, tensions, and procedural lapses, especially in the admissibility of evidence, rendering it ineffective in practice. Consequently, as was the case during colonialism, persons accused of witchcraft are regularly acquitted for want of empirical evidence while their accusers are imprisoned for defamation. The article demonstrates that criminal law, in its current form, is ill-adapted to curtailing witchcraft. To suppress witchcraft beliefs and accusations effectively, the article proposes, among other measures, reform of the criminal law or, alternatively, the decriminalisation of witchcraft, and a redirection of responsibility for its suppression to the domain of traditional authorities.

Key Words: Witchcraft; Witches; Accusations; Defamation; Criminal law; Anglophone Cameroon.

INTRODUCTION

As is the case in many sub-Saharan African countries, belief in witchcraft is a feature of daily life in Cameroon across society, from the illiterate rural dweller to the educated urban bureaucrat and political authority. Those accused of practicing witchcraft are often society's most vulnerable. Witchcraft accusations were dismissed by the colonial state while those accused of the practice⁽¹⁾ were, for the most part, acquitted and their accusers convicted. As Cameroon attained independence, the practice of witchcraft was criminalised. However, the criminal law is counter-productive in this regard and an ineffective tool in the suppression of witchcraft in Anglophone Cameroon.

Witchcraft may be defined as the surreptitious use of supernatural power for evil. Belief in the practice frequently results in persecution and violence directed toward those accused. Witchcraft is implicated in various power relations and, therefore, has a role in modern life (Geschiera, 1997). Poverty and ignorance are often blamed for the spread of superstition. These beliefs have provided platforms for some individuals to evade culpability for their personal failures by attributing

them to witchcraft while it has allowed others to eliminate potential rivals. Witchcraft is a menace to society; it undermines social stability and development and subverts state authority. However, witchcraft also serves a positive social purpose, as it exerts pressure on people to observe social virtues, lest they be suspected of practicing witchcraft (Gluckman, 1963).

During the colonial period, superstition was suppressed in Anglophone Cameroon. British administrators dismissed witchcraft accusations, acquitted those accused for lack of empirical evidence, and convicted their accusers for defamation. Conversely, prior to colonialism, witches were unmasked by witchdoctors and their powers neutralised. Because witches operate in the supernatural realm, traditional authorities employed the countervailing powers of witchdoctors, themselves witches *par excellence*, to unearth suspected witches.

This paper discusses the criminalisation of witchcraft beliefs in the common law jurisdiction of Anglophone Cameroon, documenting the tensions in the relevant legislation and the insufficiency of the state courts in combating witchcraft. The paper is divided into three parts. Part 1 provides a brief review of the literature on witchcraft and the criminal justice system. Part 2 discusses Cameroon's legal system, with particular emphasis on Anglophone Cameroon, the relevant witchcraft legislation, and some of the principles of criminal justice applicable in the country. Through a review of relevant case law, Part 3 demonstrates the insufficient role played by state courts in the fight against witchcraft and suggests some possible alternative measures.

PART 1: WITCHCRAFT AND CRIMINAL LAW

There currently exists no statutory provision under Cameroonian law that provides a working definition of witchcraft. The Penal Code of 1967 makes reference to witchcraft, magic or divination but fails to define or explain these notions. This state of affairs is replicated in other jurisdictions in sub-Saharan Africa. For instance, the Kenya Witchcraft Act also neglects to define witchcraft.⁽²⁾ However, Section 3(1) of the Ugandan Witchcraft Act associates witchcraft with "supernatural powers". Similarly, in Tanganyika, witchcraft is associated with supernatural powers (Mutungi, 1975: 528–530). Anthropological and sociological research have provided definitions and explanations of witchcraft and related phenomena. Witchcraft is described as the employment of supernatural powers to cause psychological or physical harm to others, or injury to property (LeVine, 1963; Sanders, 1995; Machangu, 2015: 274). The terms "witchcraft" and "sorcery" are used interchangeably but are distinct concepts: sorcerers are ordinary humans who have acquired techniques to harm others, whereas witches are supernatural beings who possess powers to do harm (Masquelier, 2008:131–132). Witches are distinct from witchdoctors: witches use the craft malevolently, whereas witchdoctors use witchcraft for healing and are often employed for the purpose of identifying suspected cases of witchcraft. Indeed, a witchdoctor can identify and cure witches because of his status as a "super-witch" (Nsereko, 1996: 45–46). Many supposed victims of witchcraft flock to witchdoctors for assistance.

Most accounts of witchcraft are based on anthropological and sociological research. Some of these accounts have demonstrated the saliency of witchcraft beliefs and accusations, the tensions and conflicts that motivated them, the pattern and nature of these conflicts, and their impact on people (Gluckman, 1963; Fisiy & Rowlands, 1989; Siegal, 2003; Ludsin, 2003; Adinkrah, 2004; Diwan, 2004; Manala, 2004; Molina, 2005; Geschiere, 2009; Cimpric, 2010; Harries, 2010; Mgbako, 2011; Mgbako & Glenn, 2011; Quarmyne, 2011; Van Der Meer, 2013; Liepe, 2016). Witchcraft and other occult forces are also described as instrumental in power relations: they are dangerous leveling forces that are used to protect and confirm positions of power (Fisiy, 1990; Fisiy & Geschiere 1990; Geschiere 1997; Geschiere, 2006). Witchcraft is not expressive of tradition but, rather, operates as part and parcel of modernity itself. It has replicated itself in new forms of modernity (Geschiere, 1997).

Other accounts demonstrate the ambiguity inherent in approaches to witchcraft on the part of the colonial state, the post-colonial state, and traditional authorities. Colonial courts were viewed as having offered protection to those accused of witchcraft, as they often acquitted them. Conversely, those who made accusations against alleged witches or attacked them on the basis of self-defense and provocation were themselves prosecuted and convicted (Fisiy, 1990; Fisiy & Geschiere, 1990; Liepe, 2016). In some jurisdictions, post-colonial courts are said to have replicated the attitude of colonial courts, and do not support the validity of witchcraft (Cohan, 2011). Traditional courts, on the other hand, are said to support the validity of witchcraft and use unconventional methods to neutralise witchcraft practitioners (Chavunduka, 1980). Others have suggested that criminal law has not been effective in containing witchcraft; rather, a program of mass education that would offer an alternative vision of the world based on scientific knowledge is desirable (Edwards et al., 2013: 19).

There is only a very limited range of extant legal literature on witchcraft in Cameroon and elsewhere in sub-Saharan Africa. Witchcraft has been studied from a legal-historical perspective that traces the origins of the practice, as a superstition associated with the uneducated, which was subsequently de-criminalised in England, the United States, and most of Europe as education improved and the validity of witchcraft was recognised as having its basis in misguided beliefs (Lindsay, 2014). Others have looked at the legal suppression of witchcraft in Renaissance Europe from a comparative perspective, examining practices adopted in continental Europe and in England. In continental Europe, witchcraft was prosecuted primarily as a form of heresy, whereas in England it was a felony, the essence of which was its intentionality. Thus, in England the response to witchcraft took place within a framework of effective limitations on the suppressive power of the legal order and a relatively advanced conception of the due process of the law; on the Continent, the response took place within a framework of minimal limitations on the activity of the legal system, in which due process and legal restraint tended to go by the board (Currie, 1968: 10–11).

Legal defenses of witchcraft as a crime have also been analysed. Potential problems associated with the legal defenses of self-defense, provocation and insanity in witchcraft trials have been documented in the legal systems of some East

African countries. It has been suggested that witchcraft is unique and distinct from other offenses, and that the defenses of provocation and self-defense have not always been appropriate in witchcraft cases (Mutungi, 1975: 528–530; Diwan, 2004).

The limited available literature on witchcraft and the law in Cameroon has unsurprisingly been written by legal anthropologists, given their extensive interest in the field. Most of these materials bedevil on the civil law jurisdiction of Cameroon's East Region where, due to the threat witchcraft poses to development, state courts have assumed an activist role that appears to depart from established colonial precedents. State courts have relied on spectral evidence from witchdoctors, even in the absence of confession from the accused persons, to convict witches. Most of the judges themselves believe in the phenomenon of witchcraft and, thus, in the absence of credible evidence, rely on their personal conviction to convict witches. Such developments have reinforced superstitious beliefs in these communities (Fisiy, 1990; Fisiy & Geschiere, 1990; Fisiy, 1998; Diwan, 2004).

The state of affairs, as recounted in the civil law jurisdiction of East Cameroon fundamentally departs from that which prevails in Anglophone Cameroon, a common law jurisdiction. The specificity of Anglophone Cameroon, with its distinct legal tradition, and perhaps some aspects of its procedural law, has ensured that a very different outcome has arisen in witchcraft trials.

PART 2: THE CAMEROON LEGAL SYSTEM: STANDARD OF ADMISSIBLE EVIDENCE IN CRIMINAL TRIALS

The plethora of rules applicable in Cameroon's legal system is a legacy of colonialism. On the attainment of independence, some of the disparate rules were harmonised, including criminal law. The burden of proof in criminal law is proof "beyond reasonable doubt" and it rests with the prosecution. These issues and others are discussed in Part 2.

2.1: Introduction to the Cameroon Legal System

The legal landscape of contemporary Cameroon was influenced by colonialism. The colonial occupation of Cameroon by the Germans, and later the British and French during World War I,⁽³⁾ led to the imposition of Western legal models on the territory, which, hitherto, had known only a fragmentary system of customary laws. The various constitutions adopted since independence maintained the laws that had been observed in the territory prior to independence (Salacuse, 1969: 44–292; Johnson, 1970: 135–167). In what was formerly East Cameroon, French civil law predominates whereas in what was formerly West Cameroon, English common law (including Nigerian laws and ordinances) continues to apply. In East Cameroon the inquisitorial system of justice is applicable, whereas in Anglophone Cameroon, the accusatorial system prevails.⁽⁴⁾

The basis for the introduction and observance of English law in Anglophone Cameroon was the Foreign Jurisdiction Act 1890. On the basis of this Act, section 11 of the Southern Cameroons High Court Law (SCHL) 1955 and section 29 of the Magistrates' Court (Southern Cameroons) Law 1955 were enacted. These provided, in similar terms, for the application of the common law, the doctrines of equity, and statutes of general application that were in force in England on 1 January, 1990. In family matters, probate, divorce and matrimonial causes and proceedings, section 15 of the SCHL 1955 directs the High Court to apply the law and practice in force in England.

The national legislature has enacted some uniform laws and ordinances applicable throughout the territory, amongst which are the Penal and Criminal Procedure Codes.⁽⁵⁾ Irrespective of the domestication of criminal law, courts in Anglophone Cameroon continue to rely on Nigerian procedural laws, amongst which is the Evidence Ordinance, Chapter 62 of the laws of the Federation of Nigeria, 1956.

The organisation of the courts is set out in Article 3 of the Judicial Organisation Ordinance, 2006.⁽⁶⁾ There are Customary Courts, Courts of First Instance, High Courts, Courts of Appeal, State Security Court, and the Supreme Court. There are also administrative courts⁽⁷⁾ and the Special Criminal Court.⁽⁸⁾ The constitution provides for other courts.⁽⁹⁾ The courts are classified into ordinary and special courts. Special courts include the State Security Court, Court of Impeachment, the Constitutional Council, and Military Courts.⁽¹⁰⁾ The courts are arranged according to a hierarchy, with Customary Courts at the bottom and the Supreme Court at the top. Ordinary courts are either of original or appellate jurisdictions. A court of original jurisdiction is a trial court and includes the Customary Court, Court of First Instance, and the High Court. An appellate court is an appeal court and includes Courts of Appeal and the Supreme Court. With the exception of Customary Courts, ordinary courts deal with criminal trials.⁽¹¹⁾ The witchcraft cases treated in this paper are derived from ordinary courts in Anglophone Cameroon.

2.2: Witchcraft Trials: The Applicable Legislation

The practice of witchcraft is punishable under section 251 of the Penal Code. Nonetheless, section 305(1), although generally worded and specifically unrelated to witchcraft, is a provision that has come to be notoriously associated with witchcraft trials. Section 251 provides:

“Whoever commits any act of witchcraft, magic or divination liable to disturb public order and tranquility, or to harm another in his person, property or substance, whether by the taking of a reward or otherwise, shall be punished with imprisonment for from two to ten years, or with fine of from five thousand to one hundred thousand francs”.

Despite making reference to witchcraft, magic, and divination, the provision specifies a single offense rather than three separate offenses in relation to the

terms “witchcraft”, “magic” or “divination”. Furthermore, the terms are used not disjunctively but rather with implied similarity or equivalence (Anyangwe, 2011: 255). Witches, witchdoctors, soothsayers, sorcerers, diviners, etc. fall within the purview of section 251. The provision recognises the role of witchcraft as underlying popular beliefs. It does not punish witchcraft per se; it only punishes acts of witchcraft liable to disturb public order or tranquility and harm the person or property of another, and not that the act must actually have disturbed or harmed. Witchcraft that does not produce any of these results is not criminalised.

Unlike in other jurisdictions, Cameroonian law has no direct provision pertaining to witchcraft imputations.⁽¹²⁾ However, witchcraft imputations have implicitly been the subject of prosecutions under section 305(1) which criminalises defamation and provides the following:

“Whoever ... injures the honour or reputation of another by imputations, direct or indirect, of facts which he is unable to prove shall be punished with imprisonment for from six days to six months and with a fine of from five thousand to two million francs, or with only one of the penalties.”

A person is guilty of criminal defamation if he injures the honour or reputation, directly or indirectly, of another person through claims that he is unable to prove. The provision punishes imputations in the form of libel, slander, and innuendo that injure the reputation of another. A generally worded provision, often invoked to stifle the press, it has become significant in the suppression of witchcraft beliefs. Section 305(1) has acquired notoriety as contrary to the spirit of section 251. An accusation of witchcraft against someone under section 251 is liable to be punishable as defamation under section 305(1), thereby causing mutual conflict between both provisions.

2.3: Standard of Proof under Cameroonian Criminal Law

Since colonial times the practice of witchcraft has been illegal, yet administrators regarded accusations as “grounded on delusions which could not be proven by a cause-effect relationship” (Fisiy, 1998: 148). Colonial courts insisted on tangible proof and evidence of direct causation, invariably dismissing charges and, thereby, administrators were perceived as the allies and protectors of witches (Fisiy, 1990; Fisiy & Geschiere, 1990; Liepe, 2016). This state of affairs is often replicated in state courts in Anglophone Cameroon.

Cameroonian law advocates fair trial.⁽¹³⁾ A cornerstone of this principle is the presumption that the accused is innocent until found guilty during a hearing conducted in strict compliance with the rights of defense.⁽¹⁴⁾ This is a fundamental right granted to all accused persons who appear before any court in Cameroon. Under the accusatorial system in Anglophone Cameroon, the presence of the accused during trial is mandatory and the burden of proof cast upon the prosecution can only be discharged by proof “beyond reasonable doubt”.⁽¹⁵⁾ Proof “beyond reasonable doubt” is to the effect that the evidence against the accused must be strong and or supported empirically, otherwise the slightest of doubts discharges

the accused of culpability. The judge must be satisfied that, under the given circumstances, no one other than the accused could have committed the offense he is charged off. To sustain a conviction in witchcraft trials, the prosecution must establish direct and empirical evidence linking the accused to witchcraft practices or to the harm suffered by the victim. Conversely, to be acquitted of witchcraft imputations (defamation), the accused, in his defense, must provide justification for his allegation or must establish empirical evidence linking the complainant to witchcraft practices. The burden of proof lies with the prosecution.⁽¹⁶⁾ Notwithstanding the supernatural nature of witchcraft cases the prosecution is bound by this standard of proof. This principle makes it incumbent on the prosecution to prove every component of the offense. The need to establish the constitutive elements of witchcraft presents a hurdle to the prosecution. The very nature of witchcraft offenses makes it even difficult for the requisite element of *mens rea* to be established. For proof of facts by testimonial or material evidence the prosecution requires the oral testimony of witnesses and physical evidence. Admissible oral evidence must be direct⁽¹⁷⁾ and hearsay is regarded as irrelevant (Galega, 2006: 250–251). In the absence of a voluntary confession,⁽¹⁸⁾ alleged witches are unlikely to be convicted under section 251. Similarly, witchdoctors and others who make witchcraft imputations are likely to be convicted under section 305(1). Thus, the standard of proof in criminal trials is set considerably higher. Consequently, alleged witches have regularly been acquitted and their accusers convicted of defamation. Through a review of selected case laws, Part 3 unravels the fight against witchcraft in the state courts and examines the tensions between sections 251 and 305(1).

PART 3: THE FIGHT AGAINST WITCHCRAFT IN THE STATE COURTS: REVIEW OF SELECTED CASE LAW

While the practice of witchcraft is criminalised throughout Africa, prosecutions are rare owing to the difficulty of prosecuting a crime for which there is no hard evidence. In Cameroon, witchcraft trials take two forms: harm or threat of harm arising from witchcraft practices under section 251, and damage to reputation from witchcraft imputations under section 305(1).

3.1: Trials Dealing with the Practice of Witchcraft under Section 251

The case of *Ndam Phillip Mbah v The People of Cameroon* (1999)⁽¹⁹⁾ was an appeal against the judgment of a Court of First Instance in the North West Region. The appellant, Ndam Phillip Mbah, the headmaster of a primary school in Batibo,⁽²⁰⁾ was charged with, and convicted of, practicing witchcraft by the trial court. The facts of the case revealed that a primary school under the appellant's charge had a farm in which food crops, including yams, were grown. The farm adjoined the complainant's compound. Yams were routinely stolen from the school farm and, to scare away the thief, the appellant adopted a scare practice traditionally used by the people of the area, consisting of sprinkling wood ash on

stolen property and placing it where the thief would see. Superstition held that bad fortune would befall the thief upon seeing the stolen item sprinkled with wood ash. The yam tubers were then conspicuously exhibited in the school farm so that they would undoubtedly be seen by the thief should he come back to steal from the school farm. The following day, the complainant lodged a complaint with the police alleging that he had seen witchcraft paraphernalia near his compound, and that he had confronted the appellant who admitted placing it there.

The North West Court of Appeal, sitting in Bamenda,⁽²¹⁾ reversed the judgment of the trial court and acquitted the appellant. It stated:

“the elements of the witchcraft were never made in the lower court [as] there was no evidence that the appellant had done anything to disturb public order or its tranquility. All he did was to put to practice a tradition that is used in the milieu where he lived to scare away thieves and to protect property”. Further, there was no “objective test to show that use of wood ash was nefarious to [complainant’s] health or that of the population... [and] no medical certificate was produced to attest to such effect” and that “the use of wood ash without more does not tantamount to the practice of witchcraft under section 251”.

The case was a review of the trial court’s verdict convicting the appellant for practising witchcraft contrary to section 251. The judgment of the trial court represented a departure from established precedents and, unsurprisingly, it was overturned by the appellate court. Commending the appellate court’s decision as correct, Professor Anyangwe (2011: 257)⁽²²⁾ criticised the rationale, arguing that it was a miss-statement of the law for the court to intimate that the offense of witchcraft under section 251 is not consummated without proof of disturbance or without medical evidence of harm to the complainant or the population. He averred that actual harm or disturbance to the population need not necessarily have occurred for the offense to have been consummated. Thus, the refusal of the appellate court to recognise the act of the appellant as constitutive of witchcraft, among others, led to the acquittal of the appellant.

In the case of *The People of Cameroon v Alemji Mariana Forzi and five others*,⁽²³⁾ based on a voluntary confession made by the first accused, Alemji Mariana Forzi, she, alongside five other accused persons were charged with, and convicted of, practising witchcraft contrary to section 251. The evidence before the Court of First Instance, Muyuka,⁽²⁴⁾ suggested that through an act of witchcraft, the daughter of the complainant was rendered sick and subsequently died. Sometime in October 2005, the first accused confessed that she belonged to a witchcraft cult that included the other five accused persons. She alleged that she was initiated into the cult without her knowledge and that the cult was responsible for several deaths including that of the daughter of the complainant. These allegations were rejected by the other accused persons, who distanced themselves from the allegations of the first accused. In reaching its verdict, the court concluded that although the issue had dragged on for five years, the first accused had, throughout that period, been consistent in her confession. Furthermore, she

was of sound mind and had established thorough knowledge of the other accused persons. Moreover, the Court intimated that had the other accused persons been serious in challenging the voluntary confession they should have at least filed a complaint against the first accused for defamation of character, which they failed to do. The Court held that, although the first accused was a victim of circumstance, as she was initiated into the cult without her knowledge and had done everything in her power to withdraw from it, she could not, however, be exonerated from the offense of witchcraft. Consequently, based on the confession, all the accused persons were convicted as charged although the sentence meted against the first accused was more lenient; the other accused persons each received a term of 6 years imprisonment and a civil liability of 1,000.000 francs CFA to the civil claimant, the first accused received a 2 year imprisonment sentence suspended for 3 years and a fine of 1,000.000 francs to the civil claimant.⁽²⁵⁾

It is intriguing that, based on the confession of the first accused, the other accused persons were eventually convicted of practising witchcraft despite their disavowal. Although no empirical evidence is presented before the Court establishing a link between the (five other) accused persons and the confessed act of witchcraft, the court essentially relies on the strength of the confession made by the first accused to convict all the accused persons. To establish a rationale for its decision, the Court implicitly demonstrated the potentially conflicting relationship between sections 251 and 305(1) of the Penal Code. To lend weight to the confession of the first accused, the Court pointed out the failure of the other accused persons to file defamation complaints against the first accused, thus reaffirming the accuracy of her confession. Such reasoning suggests two things: firstly, the potential impact of section 305(1) to derail prosecutions under section 251 and, secondly, an accused witch, to avoid prosecution under section 251, may initiate a reverse prosecution against her accusers by filing a complaint against them under section 305(1).

One of the few cases in which an accused person was charged and convicted of practicing witchcraft in the absence of a confession, is the case of *The People of Cameroon v Mortine Chimene Tchangow*⁽²⁶⁾ before the Court of First Instance, Kumba.⁽²⁷⁾ The accused lured a four-year old child, Roland Akoh, to her house and cut seven marks, the shape of the number 7 with 7 dots in-between the numbers, on the back of his right leg with a razor blade and then applied a peppery concoction on the bleeding wounds. To stop the child from crying, she gave him food. Prior to this incident, the accused had requested of two of her neighbours that they would permit their virgin daughters to come to her house and cut her body with a razor blade so that she could apply on the wound a concoction she got from a witchdoctor; this request was denied. She had made the requests in the reverse form, as it was she who needed to make the incisions into the children's bodies. The evidence presented before the Court also suggested that the accused made several attempts at reconciliation with the parents of Roland Akoh, including financial compensation, but those attempts were futile because the accused was unwilling to disclose why the incisions had been made in the child's body or to explain the nature of the peppery substance that had been applied to the cuts. The Court established that the child's evidence in identifying the accused

as the perpetrator of the act was consistent throughout the pre-trial and trial phases and, with regard to the marks cut on the child's body and the peppery substance applied, it concluded in paragraphs 12–13 on page 16 of its judgment thus:

“The act in itself was unorthodox, in fact mystical. The boy was probably initiated [into a cult].”

Based on the totality of the evidence, particularly the accused's testimony that her witchdoctor stipulated that a virgin be used to make her drug efficient for undisclosed purposes, and the medical report evidencing that the cut marks were related to sorcery, the accused was convicted as charged. The accused was sentenced to 5 years imprisonment with hard labour and a fine of 75.000 francs in default of the fine, an additional sentence of 6 months imprisonment with hard labour. The convict was also required to pay the cost of proceedings to the court fixed at 154.190 francs and, in default of payment, an equivalent sentence of 9 months with hard labour.

In this case, the accused was convicted of practising witchcraft on a four-year old child in the absence of a confession. Interestingly, the Court inferred the practice of witchcraft based on the conduct of the accused and on the strength of a medical report issued by a medical practitioner. Based on the rationale of the Court, the accused had no authority to interfere with the child, sought no permission to do so, and also failed to inform the child's parents about the acts she had performed on him. Furthermore, her refusal to disclose the nature of the substance applied on the cut marks and her assertion that she was instructed to perform the acts by her witchdoctor, who is regarded as a ‘super witch’, only reinforced the suspicion of the practice of witchcraft. Despite the absence of empirical evidence identifying the accused as a witch, based on the totality of the evidence before it, the Court was satisfied that the conduct of the accused amounted to an infringement of section 251. Should the case go to appeal, the opinion of the Court of Appeal would be of significant interest.

3.2: Trial Dealing with Witchcraft Imputations under Section 305(1)

One of the more publicised cases dealing with witchcraft imputation appeared before the Court of First Instance, Limbe⁽²⁸⁾ in 1993. This was the so-called SONARA case, and it generated massive publicity.⁽²⁹⁾ The accused, a businessman, was charged with defamation contrary to section 305(1). The accused alleged that the complainants, two employees of an oil refinery company, SONARA, were witches who had secretly inducted him into a cult notorious for drinking human blood. He averred that the cult had, through supernatural means, orchestrated the regular accidents that afflicted his vehicles plying the highways, which often resulted in destruction and fatalities. He also alleged that the cult members feasted on the blood of his passengers and that only the complainants, who had initially inducted him into the cult, could terminate it. These unfortunate events had ruined his reputation and business. The SONARA workers denied the allegations and filed a complaint, which culminated in a charge of defamation being brought

against the accused. In court, the accused relied on the expert evidence of a witchdoctor. Having fumbled with charms and some concoctions, and even requesting that the complainants eat some of them to prove their innocence (a suggestion rejected by the court) the witchdoctor corroborated and confirmed the allegations made by the accused. The court rejected the witchdoctor's evidence as unorthodox and, therefore, inadmissible and, thus, convicted the accused as charged.⁽³⁰⁾

The case highlights the difficulties involved in proving witchcraft in the state courts. In the 'court of public opinion' the conviction of the accused was a travesty of justice;⁽³¹⁾ however, on a legal basis, the decision was correct. The evidence of the witchdoctor, perhaps sufficient to acquit the accused in a traditional court,⁽³²⁾ failed to establish an empirical and causal link between the acts of the complainants and the loss of business suffered by the accused, let alone prove that the complainants were witches. The witchdoctor's testimony fell short of the admissible standard dictated by criminal law. The conduct of the accused, in the absence of credible justifications based on direct and empirical evidence, amounted to an infringement of section 305(1).

3.3: Discussions: Prevailing Conflict and Tensions between Sections 251 and 305(1)

Despite the widespread belief in witchcraft throughout Cameroon, prosecutions in the state courts have been extremely rare. Very few cases appeared over a 10-year period in the cause lists of most of the inferior trial courts situated in the principal settlements of the South West Region, specifically Limbe, Tiko, Buea, Muyuka and Kumba.³³ The witchcraft trials discussed above reveal an unpleasant truth: the potential tensions and conflicts between sections 251 and 305(1). Indeed, the rarity of prosecutions under section 251 is, in part, due to the fact that section 305(1) makes it illegal to accuse others of witchcraft, and often no exceptions are made for accusations made to the authorities. This is an irony in the law: on the one hand the practice of witchcraft is pronounced illegal under section 251 yet, on the other hand, making accusations of witchcraft, which also comprises reporting suspected cases of witchcraft practice to the authorities, is also potentially illegal under section 305(1). Inevitably the question arises, how can witchcraft be suppressed if those making allegations are themselves subject to prosecution for defamation? The existing tensions between these provisions create a sense of uncertainty that has tilted prosecution in the opposite direction: persons fearing prosecution under section 251 have lodged complaints against their accusers for defamation under section 305(1). This was quite evident in the so-called SONARA case, discussed above, where two alleged witches brought a successful action against their accuser under section 305(1). Unsurprisingly, in convicting the accused persons of practising witchcraft under section 251, the Court, in the case of *The People of Cameroon v Alemji Mariana Forzi and five others*, was quick to rely on a contested confession by the first accused person, which implicated the other accused persons in the act of witchcraft since the confession was never challenged through a reverse prosecution, nor was any complaint made under section 305(1). This creates the impression that someone

accused of witchcraft may be absolved of culpability under section 251 by initiating a reverse action under section 305(1). Regarding this, section 305(1) has produced a surprisingly contrary result: it has diluted the efficacy of section 251 and provided a haven for alleged witches to shield themselves from potential prosecution. This state of affairs is worrisome, for example, in instances where two different complaints regarding the same dispute and subject matter, and from different complainants, are submitted to a prosecutor, the first accusing the other of practising witchcraft and the other raising a cross-complaint for defamation. Owing to the difficulty in successfully prosecuting the offense of witchcraft in the absence of a confession, it is almost certain that, in such a scenario, the cross-complaint for defamation is more likely to be entertained and prosecuted. Unsurprisingly, many witchcraft-related prosecutions appear before state courts under section 305(1) rather than section 251.

Furthermore, the conviction of witchdoctors, who are regularly charged under section 305(1), eliminates (from the perspective of traditional authorities) the only realistic opportunity to counteract witchcraft under section 251—in Cameroonian society, given that witchdoctors are the most potent force in the fight against witchcraft owing to their supposed ability to identify witches. A further complication of witchcraft cases is the reluctance of prosecution witnesses to present for trial. The fear of being a potential victim of the accused prevents many witnesses from testifying against witches. A conviction is only likely in the rare event of a voluntary confession. A legal provision, or any other law for that matter, is only as good as its ability to respond to its objectives. The abysmal record of conviction of witches has led to a deep distrust of the legal system and, rather than report incidences of suspected witchcraft to the state, there has been a resurgence of vigilante justice against alleged witches throughout sub-Saharan Africa, resulting in violence and even deaths.⁽³⁴⁾

These developments in Anglophone Cameroon are contrary to established precedents in the civil law jurisdiction of the East Region of Cameroon, where state courts have co-opted the services of witchdoctors into the fight against witchcraft. This is a novelty. Previously, a conviction by the state courts was only possible where there was concrete proof of physical attack. Recently, people accused of witchcraft have been convicted without such concrete proof and often without having confessed. Indeed, judges often rely on their personal convictions as the standard of proof in these courts. This marks a radical shift from the colonial approach and stems from the judges' belief in the validity of witchcraft and a desire not to remain indifferent to the dangers it poses, especially with regard to development efforts in the East Region (Fisiy, 1998; Fisiy & Geschiere, 1990; Fisiy, 1990). For instance, the case of *Affaire Medang Jacques & Mpome Moïse c/ Ministère Publique Mpel Mathurin & Baba Denis*,⁽³⁵⁾ is illustrative of this new trend.

In this case, two alleged witches were convicted on the basis of spectral evidence from a witchdoctor. The inhabitants of the village in question were terrified by numerous inexplicable deaths, failures in school, and strange noises that were coming from a villager's residence. A renowned witch doctor, Baba Denis, was invited to detect the source of the misfortunes that plagued the vil-

lage. Based on his vision, the witchdoctor accused two villagers of using witchcraft to cause the calamities in the village. He led the frightened inhabitants of the village to the residence of the first accused to unmask witchcraft objects, and revealed a parcel containing hair from a panther's upper lip, enough to decimate an entire village, according to superstition. According to the witchdoctor, the unexplained noises were caused by mystical planes taking off and landing on a mystical landing strip in the residence of the first accused, which were used to create havoc in the neighborhood and the neighboring village. In his bid to neutralise the landing strip, the witchdoctor was mystically attacked by the first accused, leading to a sudden drain of his strength. He proudly claimed that he had only survived this attack by defeating the first accused in their mystical fight. The second accused allegedly also used hair from a panther's upper lip, enough to decimate an entire village, to kill the village school's headmaster. Based on Baba Denis' testimony, and supported by the physical evidence of the panther's hair, the two accused villagers were convicted of practicing witchcraft, in violation of section 251 of the Penal Code. Both defendants were sentenced to five years imprisonment and fined 30,000 francs. The first accused was required to pay an additional 40,000 francs in damages to the witchdoctor. On appeal, the judgment of the trial court was upheld in its entirety. In this inquisitorial jurisdiction, the judge considered the witchdoctor's spectral evidence without taking into account the arguments of the accused to the contrary. Several other witchcraft cases have followed this precedent and witchdoctors' testimony, especially when supported by material evidence, is readily accepted by the courts. The expertise of witchdoctors is indispensable to the judges, who require proof of such mystical forms of attack.

This state of affairs in Cameroon's East Region has inadvertently legitimised belief in witchcraft, and has improved the status of witchdoctors who, in Anglophone Cameroon, are considered to be part of the problem that needs to be confronted.

3.4: Conclusions: Containing Witchcraft through Alternate Approaches

The witchcraft trials raise an inescapable dilemma: should the law be reformed to improve its effectiveness or should alternative measures be adopted to help combat witchcraft? It is unfair to criticise the state courts of Anglophone Cameroon for the dismal conviction record of accused witches; based on the current state of the criminal law, the courts could not have arrived at different conclusions. In this context, it is necessary to review the criminal law, particularly the standard of admissible evidence in cases of alleged witchcraft. The role of expert witnesses and circumstantial evidence must be given due consideration. Cameroon must align its criminal law system with those of countries like Zimbabwe, which recognise the evidence of expert witnesses.⁽³⁶⁾ There should be a reliance on circumstantial evidence in witchcraft cases. Evidence, for instance proof that the defendant issued threats that eventually materialised, that the defendant possessed witchcraft paraphernalia, and that the defendant has the reputation of being a witch, etc. should be given serious consideration and should,

perhaps, be admissible. These standards are reasonable expectations in a traditional community.

By their very nature, witchcraft trials are inappropriate in state courts owing to their supernatural dimensions. If the de-criminalisation of witchcraft is an unrealistic option, then the state must explore other avenues, including the engagement of traditional authorities in the fight against witchcraft. Traditional authorities have credible ability and expertise, from the people's perspective, which can aid in combating witchcraft. With the aid of witchdoctors and circumstantial evidence,⁽³⁷⁾ alleged witches are unmasked, neutralised and sometimes banished or reintegrated into society after undergoing exorcisms. Mediation is initiated where witchcraft accusations are based on unfounded claims. Traditional authorities may also act pre-emptively to neutralise witches before they harm members of the community. The Bakweri ethnic group of the South West Region of Cameroon provides a good illustration. The group occasionally hires the services of a feared witchdoctor, *Obasingjom*, from Nigeria who visits the community in times of need to neutralise the powers of unsuspecting witches. In traditional societies, the witchdoctor is the main force sanctioning witchcraft, but he is also a key representative of witchcraft. And witchdoctors are only capable of doing what they do because they themselves are witches who have beaten all records (Fisiy & Geschiere, 1990: 155). Indeed, they are, to an extent, super-witches or spiritual policemen.

Such measures are unavailable in state courts. Apart from the damages that victims of witchcraft may recover, the only other remedy offered by state courts is the unlikely imprisonment of accused witches. By incarcerating witches, the criminal justice system offers only a small solution to an intractable issue, that of preventing witches from re-offending. Peter Geschiere (2006: 222) argues that imprisonment produces the opposite effect; the fear is that upon their release from prison, witches will become even more dangerous. The criminal justice system falls short of the comprehensive approach required to combat witchcraft that is available in traditional courts. Therefore, resources should be deflected toward the promotion of good practices in traditional courts, including the rehabilitation of accused witches pending the neutralisation of their powers.

The fight against witchcraft requires a holistic approach that caters both for accused persons and for victims of harm. Credible accusations must be distinguished from false accusations. Human rights norms should be extended to safeguard the plight of victims of witchcraft accusations, who are often subjected to violence, and even death.⁽³⁸⁾ It is necessary, therefore, to vigorously extend human rights rhetoric to witchcraft cases.

A massive educational campaign should be promoted to educate the public with regard to how best to respond to witchcraft accusations. Although superstition affects all sectors of Cameroonian society, it thrives primarily amongst the illiterate sectors and, especially, in rural communities. Thus, illiteracy has proliferated witchcraft beliefs and accusations. Education will empower the people, and provide them with the knowledge and skills required to contest false allegations of witchcraft aimed at furthering other goals. The capacity of the criminal justice system to respond to witchcraft depends, in part, on strengthening its ability

through these mechanisms.

Religion, specifically Christianity, has been suggested as a potentially vital tool in the eradication of belief in witchcraft. The inefficiency of the criminal law has caused people to seek solutions elsewhere, notably in the rapidly growing Pentecostal churches. Indeed, the Pentecostals seem to be much more efficient than the state in dealing with the dangers inherent in witchcraft (Meyer, 1999). The Bible has been referred to as an “anti-witchcraft manual” containing numerous anti-witchcraft provisions and, indeed, it could be argued that the whole of Christian teaching is aimed at countering beliefs in malevolent powers such as witchcraft (Harries, 2000: 146–147). Irrespective of these factors, Pentecostal churches have exploited superstition for financial reasons. If such accusations are to be contained, there should be a form of regulation of some of the processes adopted by Pentecostal revivalist churches, especially in the fight against occult forces. While religious freedom should not be curtailed in any form, activities of the church that impact on the human rights of children must be checked and condemned. To protect children, pastors of Pentecostal churches should be answerable to the same standards under criminal law should they make unfounded accusations of witchcraft against children. Such a measure, although likely to be controversial, would reduce the frequency of false accusations of witchcraft in these churches. Only through a holistic approach can the threat increasingly posed by belief in witchcraft be effectively neutralised. In the absence of concrete and practical measures that resonate with the consciousness of the people, the criminal law will remain a weak and ineffective tool in the fight against witchcraft in Anglophone Cameroon.

NOTES

- (1) For the purpose of this paper, the appellation “witch” is used in a general sense to refer to both men and women who practice witchcraft.
- (2) Indeed, the Kenyan Witchcraft Act is contradictory—the language of Section 3 suggests a denial of the existence of witchcraft whereas section 11 punishes anyone who uses witchcraft to commit murder. Similarly, the South African Witchcraft Suppression Act, 1957, denies the reality of witchcraft and denigrates African religion and culture (Cohan, 2011: 829–830).
- (3) Cameroon was originally annexed by Germany on 12 July, 1884. With the defeat of Germany during World War I, the territory was divided and administered as two separate entities by the victorious powers, France and Britain. French-administered Cameroon (Francophone or former East Cameroon) gained independence from France on 1st January, 1960. British-administered Cameroon (Anglophone or former West Cameroon) was divided and administered as two separate entities, British Northern and British Southern Cameroons, both administered as part of Nigeria. Two separate plebiscites were conducted in British-administered Cameroon. In the plebiscite held in British Northern Cameroons, the people voted in favour of unification with Nigeria, and Northern Cameroon became an integral part of Nigeria. Following the other UN organised plebiscite, which was held simultaneously on 11 February 1961, British Southern Cameroon gained independence from Britain by re-uniting with Francophone Cameroon on 1 October, 1961 (Ngoh, 1996: 60–168).

- (4) Under common law the judge acts as neutral arbiter between the parties in dispute. The position of judge is rather passive as he or she does not undertake any independent investigation into the subject matter of the dispute. The judge does not himself interrogate the witnesses, but his task is to ensure that all aspects of the procedure are respected. At the end, the judge should decide the case according to the more convincing of the competing presentations. Under civil law procedure the judge examines the witnesses, and the parties in dispute practically have no right of cross-examination. Compared to common law, the judge in civil law plays a more active role in the proceedings, e.g. by questioning witnesses and formulating issues. This is because the court has the task to clarify the issues and help the parties to make their arguments. The judge does not have to wait for the counsels to present evidence, but he or she can actively initiate the introduction of relevant evidence and may order one of the parties to disclose evidence in its possession. The judge has a task not merely to decide the case according to the stronger of the competing presentations, but to ascertain the definite truth and then to make a just decision.
- (5) The Penal Code came in force in 1967 and harmonised disparate substantive criminal laws applicable in Francophone and Anglophone Cameroons. The Criminal Procedure Code (Law No. 2005 of 27 July 2005) was adopted in 2005 and established the rules governing the application of the criminal law including investigation of offenses, methods of adducing evidence, search and identification of offenders, etc.
- (6) Law No. 2006/015 of 29 December 2006. It amended certain provisions of the 1972 (Law No. 72/04 of 26 August, 1972); 1989 (Law No. 89/019 of 29 December, 1989) and 1990 ordinances (Law No. 90/058 of 19 December, 1990).
- (7) Administrative Courts are governed by Decree No. 2013/202 of 28 June, 2013, amending and supplementing Decree No. 80/299 of 26 July 1980.
- (8) A Special Criminal Court was set up by Law No. 2011/28 of 14 December, 2011, amended by Law No. 2012/011 of 6 July, 2012, and, according to Section 2(new) it is competent to “Hear and determine matters of misappropriation of public property and related offenses where the value of the loss is at least fifty million francs CFA as provided for by the Penal Code and International Conventions ratified by Cameroon”. It became operational in October, 2012, and supplements, in specific matters, the criminal jurisdiction of ordinary courts.
- (9) Constitutional Court (Article 46) and Court of Impeachment (Article 51(1)).
- (10) Provided for under Ordinance No. 87–89 of July 15, 1987.
- (11) Section 288 of the Criminal Procedure Code (Law No 2005 of 27 July, 2005).
- (12) Witchcraft imputations are punishable under Section 1(a) of the South African Witchcraft Suppression Act, 1957 (as amended), Section 99 of the Zimbabwe’s Witchcraft Suppression Act, 2006, and Section 3 of the Uganda’s Witchcraft Act, 1957.
- (13) The Preamble of the 1996 Constitution (Law No. 96-06 of 18 January, 1996, to amend the Constitution of 2 June, 1972) states: “The law shall ensure the right of every person to a fair hearing before the courts”.
- (14) See Preamble of the Constitution. Also see Section 8 of the Criminal Procedure Code which states:
 1. Any person suspected of having committed an offense shall be presumed innocent until his guilt has been legally established in the course of a trial where he shall be given all necessary guarantees for his defense.
 2. The presumption of innocence shall apply to every suspect, defendant and accused.
- (15) Section 137(1) of the Evidence Act Chapter 62 of the laws of the Federation of Nigeria, 1956, provides: “If the commission of a crime by a party to any proceeding is directly in issue in any proceeding, civil or criminal, it must be proved beyond reasonable doubt.”
- (16) Section 307 of the Criminal Procedure Ordinance, 2005: “The burden of proof shall lie

- upon the party who institutes a criminal action.”
- (17) Section 335 of the Criminal Procedure Code.
 - (18) Section 315(1) of the Criminal Procedure Ordinance, 2005, defines a confession as: “a statement made at any time by an accused in which he admits that he committed the offense with which he is charged”. Sub Section (3) provides: “A voluntary confession shall constitute evidence against the person who made it”.
 - (19) Derived from Anyangwe (2011: 256–257).
 - (20) A small town located in Momo Division of the North West Region.
 - (21) Bamenda is the regional capital of the North West Region.
 - (22) He argues that the conduct complained of as being an act of witchcraft (a common traditional practice of protecting especially farm crops from thieves) was not conduct liable to disturb public order or tranquility; it was liable to affect the personal tranquility of an individual, the thief, but not that of the public; and the practice was also clearly not liable to harm the complainant, except of course he was the thief, in which case it could be said that the traditional belief in question by inducing belief in ill fortune befalling the thief, was an act liable to harm the complainant. But it was never contended, admitted or established that the complainant was the thief.
 - (23) Suit No MUM/389C/05-06CC: unreported.
 - (24) Muyuka is a small town in the South West Region of Cameroon.
 - (25) Another case in which an accused person was convicted based on a voluntary confession is the case of *The People of Cameroon v Cecilia Edema* (TM//202C/95 of 11 December, 1995), where the accused pleaded guilty of practicing witchcraft on her daughter (Galega, 2006: 251).
 - (26) Suit No. CFIK/DS/589/2011: unreported.
 - (27) Kumba is one of the major cities of the South West Region of Cameroon.
 - (28) Limbe is one of the major cities in the South West Region.
 - (29) Neither the names of the parties to the suit nor the suit number were obtained from court records given that the court was destroyed by fire a few days after the suit was determined.
 - (30) The fallout of the case didn’t end with the verdict. A few days after the verdict was pronounced, a mysterious fire swept through the court building in the dead of night and reduced most of it to ashes. The fire was attributed to the wrath of the witchdoctor who, it was said, had expressed dismay at the court’s rejection of his evidence and at the conviction of the accused. Although the convicted businessman had demonstrated an intention to appeal the verdict, this was never done, for the records of proceedings were burnt during the fire making it impossible to process an appeal. Further, the businessman was said to have died and this was closely followed by the death of the witchdoctor. These unfortunate series of events were widely attributed to the cult with which both deceased parties had unsuccessfully attempted to wrestle and to which the complainants were allegedly said to belong.
 - (31) There was a feeling amongst the people of victimisation against the accused because of the trial court’s rejection of the evidence of the witchdoctor. In traditional societies, the evidence of witchdoctors is highly credible in witchcraft cases. Further, during the period in question, several workers of the company were said to be linked to witchcraft practices. Moreover, most people believed that the business misfortunes of the accused were due to witchcraft.
 - (32) These are courts that hitherto existed in the territory prior to colonialism. They employ traditional mechanisms in the settlement of disputes and are not part of the official justice system. They are usually administered by local chiefs and traditional authorities and are quite popular in rural areas of the country.

- (33) In the course of writing this paper, I visited several trial courts in the South West Region to research cases on witchcraft and also spoke with several state prosecutors who confirmed the rarity of such cases, despite the many complaints they received relating to witchcraft, due in part to the difficulty of a successful prosecution.
- (34) For example, Haile Ludsin (2003) reports that due to a feeling of helplessness, in *S v. Ndlovu*, the defendant explained that he killed the witch who had killed his son after his accusations had been rejected by both the traditional leader and the police.
- (35) Arret No. 8/COR du 04/10/1983: Derived from Fisiy (1990:12–14).
- (36) Section 98(4) of Zimbabwe Witchcraft Suppression Act, 2006.
- (37) In the Northern Province of South Africa, an older man was convicted of witchcraft on the evidence of a verbal threat and proof that the harm occurred as threatened. The accused had warned the complainant that lightning would strike him on 9 November, 1995. On that night, lightning struck the complainant's hut. He managed to escape, finding a place to stay with a friend. Two nights later, lightning struck the friend's hut. The complainant and his friend escaped the burning hut. With the evidence of both a threat and the threat coming true, the chief ordered the older man to leave the village (Ludsin, 2003: 83–87).
- (38) In Tanzania, between 1991 and 2001, about 20,000 people were killed, accused of practicing witchcraft, a disproportionate number being elderly women (Petraitis, 2003). Online. http://infidels.org/library/modern/richard_petraitis/witch_killers.html (Accessed 23 October, 2016).

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